

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA**

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State of Oklahoma, ex rel. W.A. Drew  
Edmondson, in his capacity as Attorney  
General of the State of Oklahoma and  
Oklahoma Secretary of the Environment C.  
Miles Tolbert, in his capacity as the Trustee  
for Natural Resources for the State of  
Oklahoma,

Plaintiffs,

v.

Tyson Foods, Inc., Tyson Poultry, Inc., Tyson  
Chicken, Inc., Cobb-Vantress, Inc., Cal-Maine  
Foods, Inc., Cal-Maine Farms, Inc., Cargill,  
Inc., Cargill Turkey Production, LLC,  
George's, Inc., George's Farms, Inc., Peterson  
Farms, Inc., Simmons Foods, Inc., and  
Willow Brook Foods, Inc.,

Defendants.

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05-CV-0329 GKF-SAJ

**THE CARGILL DEFENDANTS' SEPARATE RESPONSE TO PLAINTIFFS'  
MOTION FOR PRELIMINARY INJUNCTION**

Defendants Cargill, Inc. and Cargill Turkey Production, LLC join in the Defendants' Joint Response to Plaintiffs' motion for preliminary injunction and submit this separate response to address additional aspects of the motion.

**ADDITIONAL RELEVANT FACTS AND PROCEDURAL BACKGROUND**

Cargill, Inc. is the grandparent (parent of the parent) corporation of codefendant Cargill Turkey Production, LLC ("CTP"). (See, e.g., Dkt. 95 at 1) Although Cargill, Inc. was at one time involved with poultry growing operations, Cargill, Inc. does not presently own or operate

any poultry operations within the Illinois River Watershed (IRW) and does not presently contract with any poultry growers. (See, e.g., Ex. 1 at 2, 7, 9: Cargill, Inc.'s April 2006 Initial Disclosures;<sup>1</sup> Ex. 2 at 3: Cargill, Inc.'s Answer to Pls.' First Set of Interrogatories (May 23, 2006) (stating Cargill, Inc. "ceased poultry production operations" in 2004); Ex. 3 at 2: Cargill, Inc.'s First Supp. Answer to Pls.' First Set of Interrogatories (Sept. 14, 2007) (same)). Plaintiffs' own brief in support of its preliminary injunction motion acknowledges these facts:

Defendant Cargill, Inc. had its own operations and contract growing operations in the IRW until April 2004, when it transferred its poultry operations to Cargill Turkey Production LLC.

Dkt. No. 1373, at 5-6 n.3 (citing Cargill, Inc.'s discovery responses). Thus, of the Cargill Defendants, only CTP presently owns turkey breeding and processing facilities in the IRW or contracts with growers who raise turkeys in the IRW.

Despite their awareness of these facts, Plaintiffs filed a motion on November 14, 2007 against all Defendants, including Cargill, Inc., seeking:

. . . entry of a preliminary injunction enjoining **each Defendant** from (1) applying poultry waste to any land within the [IRW] and (2) allowing the application of poultry waste generated at its respective poultry feeding operations and/or the application of poultry waste generated at its respective poultry feeding operations under contract with it to any land within the IRW.

Dkt. No. 1373, at 10, 24 (emphasis added).

After Plaintiffs filed this motion, Cargill, Inc.'s attorneys repeatedly pointed out the fact that Plaintiffs already knew: that Cargill, Inc. does not presently own, operate, or

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<sup>1</sup> Cargill, Inc.'s initial disclosures stated "All poultry production practices in the [IRW] from April 2004 to present were conducted by Cargill Turkey Production, LLC, a wholly owned subsidiary of Cargill Meat Solutions Corporation, which is a wholly owned subsidiary of Cargill, Inc." (Ex. 1 at 2, 7.) In the same disclosures, Cargill, Inc. stated: "By the date this action was filed (June 13, 2005), all poultry production practices in the IRW were conducted by Cargill Turkey Production, LLC a wholly owned subsidiary of Cargill Meat Solutions Corporation, which is a wholly owned subsidiary of Cargill, Inc." (Id. at 9.)

contract with any poultry operations within the IRW. Cargill, Inc.'s attorney noted that Plaintiffs were asking the Court to enjoin Cargill, Inc. from activities in which Cargill, Inc. does not engage and asked Plaintiffs' attorneys either to identify their factual and legal basis for seeking injunctive relief against Cargill, Inc. or to amend their motion to omit Cargill, Inc. as a target of the proposed injunction. (See Ex. 4: Letters from B. Jones to L. Bullock and R. Garren dated Nov. 28, Dec. 7, and Dec. 20 and email dated Dec. 21, 2007.) On December 27, 2007, Plaintiffs' attorney Richard Garren finally sent an email responding to these letters. Mr. Garren declined to provide any legal or factual basis for the motion against Cargill, Inc. and stated only:

Based on Cargill, Inc.[']s corporate disclosures that Cargill Turkey Production, LLC is a wholly owned subsidiary of Cargill Meat Solutions Corporation which is a wholly owned subsidiary of Cargill, Inc.[,] unless Cargill, Inc[.] agrees to be bound by any injunctive relief that may issue I must wait until after the Cargill 30(b)(6) depositions before I can respond to your inquiry.

(Ex. 5: Dec. 27, 2007 email from R. Garren to B. Jones.) On February 1, 2008, Magistrate Judge Joyner granted the Cargill Defendants' motion to quash Plaintiff's proposed Rule 30(b)(6) deposition of Cargill, Inc. until after the hearing on the motion for preliminary injunction. See Dkt. No. 1502 at 3-4. Plaintiffs' attorneys have provided no further information concerning any ground for their preliminary injunction motion against Cargill, Inc.

## **DISCUSSION**

### **I. PLAINTIFFS HAVE NO STANDING TO PURSUE THE PRESENT MOTION FOR PRELIMINARY INJUNCTION AGAINST CARGILL, INC.**

Plaintiffs' motion for preliminary injunction seeks to stop Cargill, Inc. and/or its independent contractor growers from land-applying poultry litter in the IRW. Cargill, Inc., however, does not own or operate *any* poultry operations in the IRW and does not contract with

any growers with poultry operations in the IRW. As a consequence, Cargill does not engage in, and is not in a position to engage in, the conduct that Plaintiffs' present motion seeks to enjoin. An injunction against Cargill, Inc. therefore could not possibly ameliorate the harm Plaintiffs allege, and Plaintiffs have no standing to pursue the injunction against Cargill, Inc. The Court should deny Plaintiffs' motion for preliminary injunction as it relates to Cargill, Inc.<sup>2</sup>

**A. Because Plaintiffs' Proposed Injunction Against Cargill, Inc. Will Not Redress Any Future Injury Plaintiffs Claim, Plaintiffs Lack Standing to Seek Such Injunctive Relief Against Cargill, Inc.**

The Court should deny Plaintiffs' motion for preliminary injunction against Cargill, Inc. because Plaintiffs lack standing to seek such relief from this Defendant. To invoke federal jurisdiction, "a plaintiff bears the burden of demonstrating . . . an injury-in-fact, causation, and redressability"—the essential elements of Article III standing. Bronson v. Swensen, 500 F.3d 1099, 1106 (10th Cir. 2007). Redressability means "a likelihood that the injury-in-fact will be redressed by a favorable decision." Id. at 1111. "Each plaintiff must have standing to seek each form of relief in each claim." Id. at 1106. A defendant "is right to insist that a plaintiff must demonstrate standing separately for each form of relief sought." Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., 528 U.S. 167, 185 (2000); see, e.g., Los Angeles v. Lyons, 461 U.S. 95, 109 (1983) (holding plaintiff had no standing to pursue injunctive relief despite having standing to seek damages); see also Lewis v. Casey, 518 U.S. 343, 358 n.6 (1996) ("Standing is not dispensed in gross.").

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<sup>2</sup> This response addresses *only* the relief Plaintiffs seek in their present motion for preliminary injunction. Cargill, Inc. does not in this submission address or seek any ruling concerning any of the remedies Plaintiffs otherwise seek based on Cargill, Inc.'s historical involvement in the poultry industry in the IRW.

Here, Plaintiffs have moved for a preliminary injunction against Cargill, Inc. under 42 U.S.C. § 6972(a), seeking to enjoin Cargill, Inc. from doing two things:

(1) applying poultry waste to any land within the [IRW] and (2) allowing the application of poultry waste generated at its respective poultry feeding operations and/or the application of poultry waste generated at its respective poultry feeding operations under contract with it to any land within the IRW.

Dkt. No. 1373 at 10, 24. As noted above, however, the parties do not dispute that Cargill, Inc. (1) does not apply poultry waste to land within the IRW, (2) has no “poultry feeding operations” in the IRW, and (3) has no “poultry feeding operations under contract with it” in the IRW. See *id.* at 5-6 n.3.

These undisputed facts establish as a matter of law that an injunction against Cargill, Inc. would not redress any injury of which Plaintiffs complain, and Plaintiffs therefore lack standing to seek such relief against Cargill, Inc. Cargill, Inc. is not in a position to engage in the future land-application of poultry litter that Plaintiffs seek to enjoin, and the grant of Plaintiffs’ proposed injunction against Cargill, Inc. therefore would not reduce the amount of poultry litter applied in the IRW by a single ounce.

Because the absence of any challenge to the future conduct of Cargill, Inc. renders Plaintiffs’ proposed injunctive remedy against Cargill, Inc. meaningless, Plaintiffs lack standing to pursue the injunction against this Defendant. See *Phelps v. Hamilton*, 122 F.3d 1309, 1316 (10th Cir. 1997) (“[T]he Supreme Court [has] made clear that plaintiffs may lack standing to seek prospective relief when the challenged conduct is no longer continuing.”). Whatever *past* injury Plaintiffs may claim Cargill, Inc. has caused, such alleged “past injury would not be redressable by the prospective relief . . . sought in this case.” *Nova Health Sys. v. Gandy*, 416 F.3d 1149, 1155 n.6 (10th Cir. 2005) (citing *San Diego County Gun Rights Comm. v. Reno*, 98

F.3d 1121, 1126 (9th Cir. 1996) (“Because plaintiffs seek declaratory and injunctive relief only . . . it is insufficient for them to demonstrate only a past injury.”)); see also Buchwald v. Univ. of N.M. Sch. of Med., 159 F.3d 487, 493 (10th Cir. 1998) (“To receive forward-looking injunctive or declaratory relief . . . , it is insufficient for [plaintiff] to claim that she was harmed by the policy [of the defendants] in the past.”); Bronson, 500 F.3d at 1112 (stating the absence of a “nexus” between the defendant’s authority to correct the challenged activity and the challenged activity meant that “[e]njoining th[e] defendant . . . would be a meaningless gesture”).

Given Plaintiffs’ lack of standing to pursue their present motion for injunctive relief against Cargill, Inc., the Court should deny Plaintiffs’ request against this Defendant.

**B. Plaintiffs Cannot Seek Relief Against Cargill, Inc. Based on CTP’s Claimed Conduct.**

Plaintiffs cannot avoid this result by trying to justify an injunction against Cargill, Inc. based on the claimed conduct of its twice-removed subsidiary CTP. Plaintiffs’ motion to enjoin Cargill, Inc. is entirely independent of any relief Plaintiffs might seek against CTP, a second, separate corporation. “It is the general rule that a corporation is a distinct legal entity separate and apart from other legal entities . . . .” Gulf Oil Corp. v. Oklahoma, 360 P.2d 933, 936 (Okla. 1961); accord United States v. Bestfoods, 524 U.S. 51, 61 (1998) (“It is a general principle of corporate law deeply ‘ingrained in our economic and legal systems’ that a parent corporation (so-called because of control through ownership of another corporation’s stock) is not liable for the acts of its subsidiaries.” (quotation omitted)); Home Ins. Co. v. Crawford, 251 Ark. 843, 846 (Ark. 1972) (“Even those corporations with identical officers, stockholders and managers and with the same post office address are separate legal entities, and liability of one for the acts of the

other must be predicated upon other facts, and the fact that such corporations have mutual dealings is not sufficient.”).

Plaintiffs offer no reason to disregard this hornbook law here. Neither Plaintiffs’ motion nor their discovery responses offer any factual or legal basis for piercing the two layers of corporate veils that would be necessary to justify enjoining Cargill, Inc. based on any claimed conduct of CTP. Indeed, Plaintiffs’ Second Amended Complaint itself (correctly) treats Cargill, Inc. and CTP as two separate corporate entities and does not even *claim* that the two corporations are alter egos or that one may be legally responsible for the conduct of the other. (Second Amended Complaint ¶¶ 12-13 (Dkt. 1215.)) Nor does Plaintiffs’ motion for preliminary injunction allege any grounds for piercing these veils.

Cargill, Inc. and CTP are separate corporations, and any claim for injunctive relief Plaintiffs may assert against CTP does not give Plaintiffs automatic standing to seek the same relief against Cargill, Inc. Plaintiffs have no standing to pursue the injunctive relief they describe in their motion against Cargill, Inc.

## **II. FEDERAL RULE OF CIVIL PROCEDURE 65(c) REQUIRES THAT PLAINTIFFS POST A BOND TO PROTECT DEFENDANTS AGAINST DAMAGES FROM AN INJUNCTION THAT IS NOT UPHOLD AT TRIAL.**

Plaintiffs’ motion is also deficient in failing to address the requirement that Plaintiffs post a bond for their requested preliminary injunction. Federal Rule of Civil Procedure 65(c) states in its entirety:

No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States or of an officer or agency thereof.



As the Tenth Circuit has noted, Rule 65(c) “states in mandatory language that the giving of security is an absolute condition precedent to the issuance of a preliminary injunction.” Atomic Oil Co. v. Bardahl Oil Co., 419 F.2d 1097, 1100-01 (10th Cir. 1969). As a result, “the trial judge’s consideration of the imposition of bond is a necessary ingredient of an enforceable order for injunctive relief.” Coquina Oil Corp. v. Transwestern Pipeline Co., 825 F.2d 1461, 1462 (10th Cir. 1987). Procedurally, the enjoined party need not move for a bond; it is the trial court’s burden to consider the issue. Id. at 1462 n.1

Recognizing that only the federal government and its agencies and officers are necessarily exempted from the Rule, federal courts have applied Rule 65(c)’s bond requirements to states seeking injunctions. See, e.g., Md. Dep’t of Human Res. v. U.S. Dep’t of Agric., 976 F.2d 1462, 1483 (4th Cir. 1992) (holding that district court erred in failing to require Maryland to post a bond under Rule 65(c), where there was “virtual certainty” that the enjoined party “would suffer substantial monetary damage” from the injunction).<sup>3</sup>

Here, as discussed in the Defendants’ joint response, both the Defendants and affected non-parties stand to lose tens of millions of dollars should the injunction issue, money that they will be entitled to recover from Plaintiffs should the Court ultimately conclude that Plaintiffs’ RCRA claim of “imminent and substantial endangerment to human health” based on bacteria fails on its merits. Plaintiffs’ preliminary injunction motion neither proposes an appropriate bond nor suggests that Plaintiffs are exempt from the bond requirement. Should the Court for

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<sup>3</sup> See also In re Nat’l Credit Mgmt. Group, LLC, 21 F. Supp. 2d 424, 463 (D. N.J. 1998) (New Jersey not exempt); Waterfront Comm’n of N.Y. Harbor v. Constr. & Marine Equip. Co., 928 F. Supp. 1388, 1405 (D. N.J. 1996) (an instrumentality of New York and New Jersey, unlike a federal agency, not exempt); cf. State ex rel. Okla. Tax Comm’n v. Int’l Registration Plan, Inc., 264 F. Supp. 2d 990, 998 (W.D. Okla. 2003) (in which the court creatively suspended defendants’ ongoing payments to the State of Oklahoma, which sought the injunction, so as to “satisfy the security requirement of Fed. R. Civ. P. 65(c)”).



any reason grant any injunctive relief to Plaintiffs, such relief must be conditioned on Plaintiffs posting a bond sufficient to secure the damages Defendants and third parties will suffer as a result of the injunctive relief actually granted.

### CONCLUSION

For the reasons set forth above, Cargill, Inc. urges the Court to

- (1) deny Plaintiffs' motion to enjoin Cargill, Inc., and
- (2) require Plaintiffs to post an appropriate Rule 65(c) bond to secure Defendant and third-party damages that may be caused by any injunction the Court might issue.

Respectfully submitted,

Rhodes, Hieronymus, Jones, Tucker & Gable,  
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## CERTIFICATE OF SERVICE

I certify that on the 12th day of February, 2008, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

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